

From: [Perry, Mark](#)
To: [Chris Kayser](#); zzz.External.tinfinger@wc.com
Cc: [Casey, B. \(john.casey@stoel.com\)](mailto:Casey, B. (john.casey@stoel.com)); [Nord Tim D](#); [Glick, Kolya](#); [Stewart, Beth](#); [Hiemstra Cheryl](#); jayme.weber@azag.gov
Subject: Re: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)
Date: Thursday, February 13, 2025 12:42:52 PM
Attachments: [image007.png](#)
[image008.png](#)
[image009.png](#)

External E-mail

Chris,

The States may note in their motion that Defendants oppose a request for additional time within which to file a fee petition in the Oregon litigation.

Thanks.

MAP



Mark A. Perry

Appeals and Strategic Counseling Co-Head

Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington, DC 20036
mark.perry@weil.com
+1 202 682 7511 Direct
+1 540 692 2460 Mobile

From: Chris Kayser <cjkayser@lvklaw.com>
Date: Wednesday, February 12, 2025 at 5:28 PM
To: Mark Perry <Mark.Perry@weil.com>, "Infinger, Tyler" <tinfinger@wc.com>
Cc: "Casey, B. (john.casey@stoel.com)" <john.casey@stoel.com>, Nord Tim D <Tim.D.Nord@doj.oregon.gov>, "kolya.glick@arnoldporter.com" <kolya.glick@arnoldporter.com>, "Stewart, Beth" <BStewart@wc.com>, Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>, "jayme.weber@azag.gov" <Jayme.Weber@azag.gov>
Subject: Re: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

Mark — we will be able to give you a better idea of our estimate in a few weeks. If that means Defendants will oppose the request for more time to file the petition, please let me know and we will note that in the motion which we intend to file at noon pacific tomorrow. Thank you for your consideration.

Best,

Chris

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From: Perry, Mark <Mark.Perry@weil.com>

Sent: Wednesday, February 12, 2025 5:03:51 PM

To: Chris Kayser <cjkayser@lvklaw.com>; Infinger, Tyler <tinfinger@wc.com>

Cc: Casey, B. (john.casey@stoel.com) <john.casey@stoel.com>; Nord Tim D <Tim.D.Nord@doj.oregon.gov>; kolya.glick@arnoldporter.com <kolya.glick@arnoldporter.com>; Stewart, Beth <BStewart@wc.com>; Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>; jayme.weber@azag.gov <Jayme.Weber@azag.gov>

Subject: Re: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

Chris,

Would you mind providing some details on the extent of your miscommunication please? The States have now had more than 60 days to prepare their fee petition, and we were happy to consent to that timeline. You also made express representations to us in our meet and confer that you were speaking on behalf of all States, and that the total requested fees for all States would be approximately \$4-5M. Therefore, to appropriately assess your request for a further extension (totaling nearly a quarter of a year to prepare your petition), we would appreciate having a better understanding of what amount in fees the States will now be requesting. Please let us know if you are willing to provide a revised estimate of that figure.

Thanks.

MAP



Mark A. Perry

Appeals and Strategic Counseling Co-Head

Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington, DC 20036
mark.perry@weil.com
+1 202 682 7511 Direct
+1 540 692 2460 Mobile

From: Chris Kayser <cjkayser@lvklaw.com>

Date: Wednesday, February 12, 2025 at 9:36 AM

To: Mark Perry <Mark.Perry@weil.com>, "Infinger, Tyler" <tinfinger@wc.com>

Cc: "Casey, B. (john.casey@stoel.com)" <john.casey@stoel.com>, Nord Tim D <Tim.D.Nord@doj.oregon.gov>, "kolya.glick@arnoldporter.com" <kolya.glick@arnoldporter.com>, "Stewart, Beth" <BStewart@wc.com>, Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>, "jayme.weber@azag.gov" <Jayme.Weber@azag.gov>

Subject: RE: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

Mark and Tyler –

Thank you for getting back to us. Unfortunately, we are not currently in a position to commit to a specific number on the fee request. While we previously had believed it would be in the range of \$4-\$5 million, that was based on a miscommunication on our end which is in part what precipitated the request for the extension. We are also aiming to file a single brief to support each State's fee petition with each State's fees separately designated and hope to provide you with an estimation of the hours and rates by State in advance of the fee petition but are unable to commit to that at this point. We can, however, commit to working with Defendants in good faith in an effort to either narrow the issues or eliminate the need for the petition entirely. As far as timing goes, we can agree to a 30-day extension (rather than the 45-day we originally planned to seek) which would extend the date until March 14, 2025. We can also agree to extending Defendants response time 45 days to April 28, 2025 and can include that agreement in the motion. Please let me know today if that alters Defendants' willingness to consent to the extension.

Best regards,

Chris

From: Mark Perry <Mark.Perry@weil.com>

Date: Tuesday, February 11, 2025 at 2:19 PM

To: Chris Kayser <cjkayser@lvklaw.com>, "tinfinger@wc.ocm" <tinfinger@wc.ocm>

Cc: "Casey, B. (john.casey@stoel.com)" <john.casey@stoel.com>, Nord Tim D <Tim.D.Nord@doj.oregon.gov>, "kolya.glick@arnoldporter.com" <kolya.glick@arnoldporter.com>, "Stewart, Beth" <BStewart@wc.com>, Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>, "jayme.weber@azag.gov" <Jayme.Weber@azag.gov>

Subject: Re: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

Chris,

Defendants have no objection to the States' request for an additional 30 days to file their fee petition in the Oregon case, provided that Defendants have as much time to respond as the States have taken to prepare the petition and that the States confirm that point in the extension request they intend to file with the Court. Our position is based on your representations that (1) the total request will be in the neighborhood of \$5 million for all States seeking fees, (2) the States will file a single application and no State will separately request fees, and (3) the States will provide information to Defendants regarding hours and rates, by requesting State, in advance of the filing of the fee petition.

Thanks.

MAP



Mark A. Perry
 Appeals and Strategic Counseling Co-Head

Weil, Gotshal & Manges LLP
 2001 M Street NW, Suite 600
 Washington, DC 20036
mark.perry@weil.com
 +1 202 682 7511 Direct
 +1 540 692 2460 Mobile

From: Chris Kayser <cjkayser@lvklaw.com>
Date: Monday, February 10, 2025 at 3:10 PM
To: Mark Perry <Mark.Perry@weil.com>, "tinfinger@wc.ocm" <tinfinger@wc.ocm>
Cc: "Casey, B. (john.casey@stoel.com)" <john.casey@stoel.com>, Nord Tim D <Tim.D.Nord@doj.oregon.gov>, "kolya.glick@arnoldporter.com" <kolya.glick@arnoldporter.com>, "Stewart, Beth" <BStewart@wc.com>, Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>, "jayme.weber@azag.gov" <Jayme.Weber@azag.gov>
Subject: RE: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

Mark and Tyler –

I am following up on our call from last week and conferral on states' fee petition. There was a bit of miscommunication on our end and the states' preparation and review of fees was not as far along as we believed it to be. With that in mind, we intend to file a second motion for extension of time requesting until March 31, 2025. We plan to have the final fee numbers well in advance of that date but were hoping to use the additional time to see if we could negotiate a resolution and avoid filing altogether. Please let me know if Defendants will consent to the

request.

Thank you for your consideration.

Best,

Chris



CHRISTOPHER J. KAYSER

Attorney

O 503-222-4424 D 503-542-3112

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From: Pfaffenroth, Sonia Kuester <Sonia.Pfaffenroth@arnoldporter.com>

Sent: Thursday, January 30, 2025 1:54 PM

To: Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>; Weber, Jayme <Jayme.Weber@azag.gov>; Ewart, Jason C. <Jason.Ewart@arnoldporter.com>; emainigi@wc.com; 'thassi@debevoise.com' <thassi@debevoise.com>

Cc: Wolf, Matthew M. <Matthew.Wolf@arnoldporter.com>; Mark.Perry@weil.com; Casey, B. (john.casey@stoel.com) <john.casey@stoel.com>; apodoll@wc.com; Nord Tim D <Tim.D.Nord@doj.oregon.gov>; Chris Kayser <cjkayser@lvklaw.com>; Glick, Kolya <Kolya.Glick@arnoldporter.com>; Stewart, Beth <BStewart@wc.com>

Subject: RE: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

Cheryl,

Defendants are available at 9 PT on 2/5.

Thanks,

Sonia

Sonia Kuester Pfaffenroth

Partner | [Bio](#)

Arnold & Porter

601 Massachusetts Ave., NW
Washington, DC 20001-3743

T: +1 202.942.6831

Sonia.Pfaffenroth@arnoldporter.com

www.arnoldporter.com | [LinkedIn](#)

From: Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>
Sent: Wednesday, January 29, 2025 11:54 AM
To: Weber, Jayme <Jayme.Weber@azag.gov>; Pfaffenroth, Sonia Kuester <Sonia.Pfaffenroth@arnoldporter.com>; Ewart, Jason C. <Jason.Ewart@arnoldporter.com>; zzz.External.emainigi@wc.com <emainigi@wc.com>; 'thassi@debevoise.com' <thassi@debevoise.com>
Cc: Wolf, Matthew M. <Matthew.Wolf@arnoldporter.com>; zzz.External.Mark.Perry@weil.com <Mark.Perry@weil.com>; Casey, B. (john.casey@stoel.com) <john.casey@stoel.com>; zzz.External.apodoll@wc.com <apodoll@wc.com>; Nord Tim D <Tim.D.Nord@doj.oregon.gov>; cjkayser@lvklaw.com
Subject: RE: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

External E-mail

Good Morning,

As you know, the States plan to file a fee petition on or before February 14. Per LR 7-1, we would like to offer a time to meet and confer regarding our position on the petition.

We are available 9-noon Pacific on Wednesday, February 5. Is there a workable time in that window for you?

Thanks,
Cheryl

Cheryl Hiemstra

Special Assistant Attorney General

503.934.4400

From: Weber, Jayme <Jayme.Weber@azag.gov>
Sent: Monday, December 23, 2024 1:25 PM
To: 'Pfaffenroth, Sonia Kuester' <Sonia.Pfaffenroth@arnoldporter.com>; Ewart, Jason C. <Jason.Ewart@arnoldporter.com>; emainigi@wc.com; 'thassi@debevoise.com' <thassi@debevoise.com>
Cc: Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>; Wolf, Matthew M. <Matthew.Wolf@arnoldporter.com>; Mark.Perry@weil.com; Casey, B. (john.casey@stoel.com) <john.casey@stoel.com>; apodoll@wc.com
Subject: RE: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

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Hi, Sonia.

Thank you. Plaintiff States will not oppose Defendants seeking a similar extension of time to respond to our motion and will make that representation to the Court today.

Thanks,

Jayme

From: Pfaffenroth, Sonia Kuester <Sonia.Pfaffenroth@arnoldporter.com>

Sent: Friday, December 20, 2024 1:49 PM

To: Weber, Jayme <Jayme.Weber@azag.gov>; Ewart, Jason C. <Jason.Ewart@arnoldporter.com>; emainigi@wc.com; 'thassi@debevoise.com' <thassi@debevoise.com>

Cc: 'Hiemstra Cheryl' <Cheryl.Hiemstra@doj.oregon.gov>; Wolf, Matthew M. <Matthew.Wolf@arnoldporter.com>; Mark.Perry@weil.com; Casey, B. (john.casey@stoel.com) <john.casey@stoel.com>; apodoll@wc.com

Subject: RE: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

Jayme,

Defendants will consent to a motion to extend the deadline for any motion by the Plaintiff States' for costs and fees to February 14, 2025, if Plaintiffs will reciprocally agree that Defendants' time to respond to any such motion will be extended by the same amount of time.

Thanks,

Sonia

Sonia Kuester Pfaffenroth
Partner | [Bio](#)

Arnold & Porter

601 Massachusetts Ave., NW

Washington, DC 20001-3743

T: +1 202.942.6831

Sonia.Pfaffenroth@arnoldporter.com

www.arnoldporter.com | [LinkedIn](#)

From: Weber, Jayme <Jayme.Weber@azag.gov>

Sent: Friday, December 20, 2024 11:31 AM

To: Pfaffenroth, Sonia Kuester <Sonia.Pfaffenroth@arnoldporter.com>; Ewart, Jason C. <Jason.Ewart@arnoldporter.com>; zzz.External.emainigi@wc.com <emainigi@wc.com>; 'thassi@debevoise.com' <thassi@debevoise.com>

Cc: 'Hiemstra Cheryl' <Cheryl.Hiemstra@doj.oregon.gov>

Subject: RE: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

External E-mail

Good morning.

We are writing to follow up on our request that Defendants consent to a motion to extend the deadline for Plaintiff States' costs and fees motion to February 14. Do Defendants consent to, take no position on, or object to the extension?

Thank you,

Jayme

Jayme Louise Weber
Senior Litigation Counsel
Antitrust and Privacy Unit



Arizona Attorney General
400 West Congress, Ste. 215, Tucson, AZ 85701
Direct: 520-628-6609 | Fax: 602-542-4377
Jayme.Weber@azag.gov
<https://www.azag.gov/>

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From: Weber, Jayme
Sent: Tuesday, December 17, 2024 4:20 PM
To: sonia.pfaffenroth@arnoldporter.com; jason.ewart@arnoldporter.com; emainigi@wc.com; thassi@debevoise.com
Cc: 'Hiemstra Cheryl' <Cheryl.Hiemstra@doj.oregon.gov>
Subject: FTC et al. v. The Kroger Co. and Albertsons Cos. Inc. (D. Or.)

Dear Sonia, Jay, Enu, and Ted,

The Plaintiff States in FTC et al. v. The Kroger Co. and Albertsons Cos., Inc., are evaluating filing a petition for costs and fees. Under FRCP 54 and LR 54, our petition would be due on December 24. We are writing to request that Defendants consent to a motion to extend the deadline until February 14. We would also like to schedule an initial call with Defendants to discuss our petition after the first of the year.

Please let us know whether you will consent to the extension and your availability for a meeting in early January.

Happy holidays,

Jayme

Jayme Louise Weber
Senior Litigation Counsel
Antitrust and Privacy Unit



Arizona Attorney General
400 West Congress, Ste. 215, Tucson, AZ 85701
Direct: 520-628-6609 | Fax: 602-542-4377
Jayme.Weber@azag.gov
<https://www.azag.gov/>

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